

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CARNEGIE INSTITUTION OF
WASHINGTON and M7D CORPORATION,

Plaintiffs,

v.

FENIX DIAMONDS LLC,

Defendant.

Civil Action No. 1:20-cv-00200-JSR

**HIGHLY CONFIDENTIAL -
FILED UNDER SEAL**

**SECOND DECLARATION OF NICOLE E. KOPINSKI
IN SUPPORT OF DEFENDANTS FENIX DIAMONDS LLC'S RESPONSES TO
PLAINTIFFS' STATEMENT OF MATERIAL FACTS IN SUPPORT OF THEIR
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Nicole E. Kopinski, declare the following:

I am an attorney admitted *pro hac vice* to practice before this Court and a Member with the law firm of Leydig, Voit & Mayer, Ltd., counsel for Fenix Diamonds LLC. I submit this declaration to place in the record and before the Court true and correct copies of the exhibits cited in Defendant Fenix Diamonds LLC's Responses to Plaintiffs' Statement of Material Facts in Support of Their Opposition to Defendant's Motion for Summary Judgment.

16. Attached as Exhibit 16 is a true and correct copy of excerpts of the deposition of Michael Capano, Ph. D., taken October 23, 2020.

17. Attached as Exhibit 17 is a true and correct copy of excerpts of the Expert Report of Michael Capano, Ph.D. Regarding Infringement of U.S. Patent No. 6,858,078.

18. Attached as Exhibit 18 is a true and correct copy of excerpts of the deposition of Naman Parikh, taken August 19, 2020.

19. Attached as Exhibit 19 is a true and correct copy of excerpts of the Expert Report of J. Michael Pinneo, Ph. D., Regarding the Invalidity of U.S. Patents Nos. RE41,189 and 6,585,078.

20. Attached as Exhibit 20 is a true and correct copy of excerpts of the Expert Report of Karen K. Gleason, Ph. D. Regarding Validity of U.S. Patent Nos. 6,858,078 and RE41,189.

21. Attached as Exhibit 21 is a true and correct copy of excerpts of the deposition of Karen K. Gleason, Ph. D., taken October 22, 2020.

22. Attached as Exhibit 22 is a true and correct copy of a letter to Counsel from Nicole Kopinski, dated July 19, 2020.

23. Attached as Exhibit 23 is a true and correct copy of a letter to Counsel from Nicole Kopinski, dated June 22, 2020.

24. Attached as Exhibit 24 is a true and correct copy of an email to Counsel from Max Snow, dated July 1, 2020.

25. Attached as Exhibit 25 is a true and correct copy of Plaintiffs' Rule 26(a) Disclosure to Defendant Fenix Diamonds LLC, dated April 6, 2020.

26. Attached as Exhibit 26 is a true and correct copy of Defendant's Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a)(1), dated April 6, 2020.

27. Attached as Exhibit 27 is a true and correct copy of an email from Steven Sklar to Mr. James Mandilk, dated October 28, 2020.

28. Attached as Exhibit 28 is a true and correct copy of excerpts of the deposition of Yogesh Vohra, Ph.D., taken July 31, 2020.

29. Attached as Exhibit 29 is a true and correct copy of a letter to Sarah Fowler from Steven Sklar, dated May 18, 2020.

30. Attached as Exhibit 30 is a true and correct copy of a letter to Counsel from Nicole Kopinski, dated June 15, 2020.

31. Attached as Exhibit 31 is a true and correct copy of a letter to Counsel from Max Snow, dated August 26, 2020.

32. Attached as Exhibit 32 is a true and correct copy of Order Denying Reconsideration, *Oyster Optics, LLC v. Ciena Corp.*, No. 17-cv-05920-JSW, at 2 (N.D. Cal. Sept. 14, 2020), ECF No. 137.

33. Attached as Exhibit 33 is a true and correct copy of excerpts of the Responsive Expert Report of J. Michael Pinneo, Ph.D., Regarding on-Infringement of U.S. Patent No. 6,858,078.

34. Attached as Exhibit 34 is a true and correct copy of excerpts from the Markman Hearing, *Carnegie Institution of Washington and M7D Corporation v. Fenix Diamonds, LLC*, No. 20-cv-200-JSR, dated April 24, 2020.

35. Attached as Exhibit 35 is a true and correct copy of excerpts from the deposition of Yarden Tsach taken August 27, 2020.

36. Attached as Exhibit 36 is a true and correct copy of excerpts of the Rebuttal Expert Report of Dr. John Martens Regarding U.S. Patent 6,585,078.

Dated: November 4, 2020

/s/ Nicole E. Kopinski

Daniel P. Waxman (DW-0599)
BRYAN CAVE LEIGHTON PAISNER LLP
1290 Avenue of the Americas
New York, NY 10104
Telephone: (212) 541-2040
Facsimile: (212) 541-4630
dpwaxman@bryancave.com

Steven H. Sklar (*pro hac vice*)
Maxwell B. Snow (*pro hac vice*)
David M. Airan (*pro hac vice*)
Paul J. Filbin (*pro hac vice*)
Nicole E. Kopinski (*pro hac vice*)
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson Avenue
Chicago, IL 60601
Telephone: (312) 616-5600
Facsimile: (312) 616-5700
dairan@leydig.com
ssklar@leydig.com
msnow@leydig.com
pfilbin@leydig.com
nkopinski@leydig.com

Attorneys for Defendant, Fenix Diamonds LLC